THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 25329 OF 2006

BETWEEN:

Mukundas Vijay Vargee son of Gokuldas Vijaya Vargee

...Petitioner

vs.

State of Andhra Pradesh, Department. Of Municipal Administration and Urban Development, Hyderabad and three others

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION NO. 25329 OF 2006

ORAL ORDER:

The writ petition is filed by a snack vendor

locally called a 'Chat Bhandar'. The writ petition alleges unlawful interference with his business by the respondent Nos.1 to 4, in respect of the businesses under the trade-name and style of "Gokul Chat" "Gokul Extension" and "Gokul Softy," in premises bearing No.4-5-158, 4-5-177, and 4-5-169 respectively. The 5th respondent has been impleaded at the request, *qua* the order of this Court dated.04-01-2007. It is an association of residents which complains of the deleterious effects of the petitioner's business upon the environment and upon traffic in the locality.

Responding to the allegations that the official respondents on 02-12-2006 had sealed the petitioner's premises without notice and opportunity, the counter-affidavit filed by the 4th respondent asserts that there are several and severe violations of the provisions of the Hyderabad Municipal Corporation Act, 1955 (for short "the Act"); the bye-laws including M.C.H. Bye-Laws for the Regulation of Eating Houses or Hotels,1973 (for short "1973 Regulations"); the provisions of the Prevention of Food Adulteration Act,1955; and that traffic obstruction is caused by the petitioner's business in the locality.

According to the answering respondent, on 16-10-2006 the 3rd respondent issued a notice. The notice was issued under Sec.14-A of the Prevention of Food Adulteration Act, 1955, calling upon the petitioner to furnish a copy of the trade licence and PFA licence; to name the proprietor or partners connected with the business and other particulars; to furnish the name of

the supplier/ wholesaler/ manufacturer with full details; particulars of the annual business turnover; copy of the firm registration and Sales Tax Registration certificate and the name and address of the person nominated by the Management along with the copy of the nomination form approved by the Local (Health) Authority concerned under the PFA Act. Another notice was issued on 24-10-2006 informing the petitioner that in respect of the premises bearing No.4-5-158 i.e., Gokul Chat, there was no sufficient parking place and there were other violations like installation of electric generator on the footpath and supply of food items outside the premises, preparing food stuffs for sale in the unsanitary kitchen premises and supplying of unwholesome drinking water to the public.

The petitioner submitted a response on 26-10-2006 claiming to have sufficient parking area, trade licence, that the electrical generator installed on the footpath was removed; that no food items are supplied outside and that proper sanitary conditions are maintained. Another show-cause notice was issued on 04-12-2006 on the complaint of the 5th respondent alleging an unhygienic kitchen, provision of unwholesome drinking water and absence of parking area. By this notice the petitioner was called upon to respond to the allegations and in exercise of power under Sec.521, 564 and 622 of the Act, with a view to protect the public health, the Assistant Medical Officer closed and seized the kitchen of the petitioner’s business establishment.

In the light of the above orders which are received by the petitioner on 05-12-2006 the grievance that the seizure and closure of the establishment is without notice and opportunity, is misconceived.

Sri B.Nalinkumar, the learned counsel for the petitioner would contend that action under Sec.564 of the Act is impermissible since the said provision pertains to closure of a hotel or an eating-house on the detection of a case of infectious disease. Since no infectious disease is detected, the invocation of power under Sec.564 is a *non-sequitur*, is the contention. In response to this contention, the learned counsel for the respondent Nos.2 to 4 submits that power is available under the 1973 regulations. It is contended by counsel that the petitioner has violated the regulations contained in paragraph Nos.10,11,12,18,19 and other provisions of 1973 Regulations, which are enacted for safeguarding the health and hygiene of eating-places. It is further contended that power is available under Regulation 36 of the 1973 Regulations to order a hotel or an eating place to wind up its business or to prohibit the consumption of raw material or prepared articles. The owner or the occupier shall not be authorized to continue or restart the business without obtaining a fresh written permission from the Commissioner.

Though the provisions of Secs.521, 564,622 have been invoked in ordering closure on 04-12-2006 and these provisions do not authorize the exercise of such

power, since power is available under clause 36 of the 1973 regulations. Mere invocation of a wrong provision would not invalidate the action taken.

The official respondents were *prima facie* satisfied and bonafide that there was material to invoke the powers available under clause 36 of the 1973 regulations. Therefore no case is made out for interference at this stage of the matter. The petitioner has been given an opportunity to respond and his response would be considered before a final decision is taken against the petitioner's establishments. Sri B.Nalinkumar, the learned counsel for the petitioner urges that the petitioner's grievance is that the alleged violations and transgressions by the petitioner are communicated in piecemeal notices disabling him from submitting a meaningful, coherent and comprehensive response. It is also alleged that the official respondents are improving upon the allegations with each succeeding notice, rendering the defence, impractical.

In the circumstances the 2nd respondent is directed to issue a comprehensive show-cause notice to the petitioner specifying all violations or transgressions by the petitioner in respect of which action is proposed. The show-cause notice will specify each of the violations, the provisions of the Statue or Regulation that is allegedly violated and the opportunity if any provided for rectification of the violations. The show cause notice shall also specify the action proposed to be taken against the violations if the violations are of a degree as do not warrant an

opportunity for rectification. The show cause notice shall be communicated to the petitioner by a verifiable mode of communication. The petitioner shall submit his response within seven (7) days from the date of receipt of the comprehensive show cause by the 2nd respondent. Within three weeks from the date of receipt of the petitioner's response to such show cause notice, the 2nd respondent shall draw up and communicate the final decision on the allegations against the petitioner as set out in the comprehensive show cause notice. Till the decision as above, in view of the order of the respondent dated 04-12-2006, the petitioner shall not pursue such business as has been prohibited by the order dated.04-12-2006.

The 5th respondent is also at liberty to submit its representation in the matter, which if submitted within a week from today shall be considered by the 2nd respondent in formulating the final decision.

The writ petition is disposed of as above. The interim order dated.06-12-2006 in WPMP No.32452 of 2006 is dissolved. In the circumstances there shall be no order as to costs.

_____

GODA RAGHURAM,J

2ND FEBRUARY 2007
Note:
Issue CC as soon as
Possible
(B/O)
PVSN/TSNR